

ORIGINAL

IN THE MATTER OF:

Donald Canterbury
vs.
John Petrovich, M.D.

Cause No. 3:06-cv-792-MJR-PMF

Deposition of Donald Canterbury
11/14/2006

Gore Perry Gateway Lipa Baker Dunn & Butz
Certified Court Reporters & Legal Videographers
1-800-878-6750



In the United States District Court
Southern District of Illinois

DONALD CANTERBERY,

PLAINTIFF,

vs. Cause No. 3:06-CV-792-MJR-PMF

JOHN PETROVICH, M.D.,

DEFENDANT.

Deposition of DONALD CANTERBERY,
taken on behalf of the DEFENDANT, at Husch &
Eppenberger, 190 Carondelet Plaza, St. Louis,
Missouri, on NOVEMBER 14, 2006, before
Margaret M. Clodius, Missouri CCR #948, and
Notary Public within and for the State of
Missouri.

Gore Perry Gateway Lipa Baker Dunn & Butz
St. Louis 314.241.6750 St. Charles 636.940.0926

APPEARANCES OF COUNSEL:

For DEFENDANT:

Mr. Justin A. Relihan

Husch & Eppenberger

190 Carondelet Plaza

St. Louis, Missouri 63105

FOR DEFENDANT:

Mr. Todd N. Hendrickson

Law Office of Todd N. Hendrickson

100 South Brentwood, Suite 300

Clayton, Missouri 63105

Gore Perry Gateway Lipa Baker Dunn & Butz
St. Louis 314.241.6750 St. Charles 636.940.0926

INDEX

PAGE

Examination by Mr. Relihan	5
Examination by Mr. Hendrickson	61
Examination by Mr. Relihan	70

DEFENDANT'S EXHIBIT INDEX

Exhibits 1 - 4	5
Exhibit 5	8

Gore Perry Gateway Lipa Baker Dunn & Butz
St. Louis 314.241.6750 St. Charles 636.940.0926

(Defendant's Deposition Exhibits 1 - 4 marked
for identification)

DONALD CANTERBERY,

of lawful age, having been first duly
sworn to testify the truth, the whole truth,
and nothing but the truth in the case
aforesaid, deposes and says in reply to oral
interrogatories propounded as follows, to-wit:

MR. HENDRICKSON: On the record, can
we get the stipulation that this is a
deposition only on the subject of
jurisdictional grounds and diversity
jurisdiction and for no other purposes today.

MR. RELIHAN: Correct.

MR. HENDRICKSON: Okay.

EXAMINATION

QUESTIONS BY MR. RELIHAN:

Q: Sir, could you please state your name
and spell your last name for the record?

A: Donald Wayne Canterbury,
C-A-N-T-E-R-B-E-R-Y.

Q: And what's your Social Security
Number?

A: 462-96-0231.

MR. RELIHAN: Let the record reflect

Gore Perry Gateway Lipa Baker Dunn & Butz
St. Louis 314.241.6750 St. Charles 636.940.0926

1 this is the deposition of Donald Wayne
2 Canterbury taken pursuant to notice and
3 pursuant to the Federal Rules and the local
4 rules of the Southern District of Illinois and
5 also as Mr. Hendrickson said is taken pursuant
6 to the diversity jurisdiction dispute between
7 the parties.

8 Q: (By Mr. Relihan) Sir, what is your
9 current address?

10 A: 3152 Boonslick Road, St. Charles, and
11 I'm not sure on the zip code.

12 Q: Okay. How long have you lived there,
13 sir?

14 A: Approximately a month, or a little bit
15 less than a month.

16 Q: Okay. I'm going to show you what
17 we've previously marked as Exhibit 1. Sir, if
18 you could turn to the, I believe it's the
19 second to last page, it's the signature page.
20 Sir, is your signature on that document?

21 A: Yes, sir.

22 Q: Okay. And for the record, these are
23 Plaintiff's Answers to Defendant's John
24 Petrovich, MD's Diversity Jurisdiction
25 Interrogatories. Sir, have you ever seen that

*Gore Perry Gateway Lipa Baker Dunn & Butz
St. Louis 314.241.6750 St. Charles 636.940.0926*

1 document before?

2 A: Yes, sir.

3 Q: Okay. Did you review that document
4 before you signed it?

5 A: Yes, I did.

6 Q: Are all the answers in there truthful
7 and accurate?

8 A: They are.

9 Q: I'm going to show you Defendant's
10 Exhibit 2, which is Plaintiff's Responses to
11 Defendant John A. Petrovich, MD's Diversity
12 Jurisdictional Request to Produce. Can you
13 turn to the last page, sir? Is that your
14 signature?

15 A: Yes, sir.

16 Q: Have you seen this document before?

17 A: Yes.

18 Q: Did you review it?

19 A: Yes, I did.

20 Q: Are all the answers accurate?

21 A: Yes, they are.

22 Q: And just for the record, today counsel
23 provided what we'll mark as Exhibit 5, Amended
24 Supplemental Responses to the Jurisdictional
25 Request to Produce and the only addition is a

*Gore Perry Gateway Lipa Baker Dunn & Butz
St. Louis 314.241.6750 St. Charles 636.940.0926*

1 copy of a blank check of Donald W. Canterbury
2 from Bank of America. Sir, when did you give
3 that document to your attorney, that blank
4 check?

5 (Defendant's Deposition Exhibit 5 marked for
6 identification)

7 A: This morning.

8 Q: Okay. Do you live with anyone at your
9 3152 Boonslick Road?

10 A: No, I don't, I live alone.

11 Q: Is that a house, an apartment?

12 A: Duplex.

13 Q: You rent that?

14 A: Yes, I do.

15 Q: And for lack of a better term, you
16 want to call it a duplex?

17 A: Yes.

18 Q: Does someone share the other portion
19 of the, the portion of the duplex?

20 A: My land lady has the other half.

21 Q: And your land lady is Sharon Kimball?

22 A: Correct.

23 Q: How long have you known Ms. Kimball?

24 A: Since a couple days before I rented
25 it.

*Gore Perry Gateway Lipa Baker Dunn & Butz
St. Louis 314.241.6750 St. Charles 636.940.0926*

1 Q: How did you meet her?

2 A: Through my cousin. -- no, no, can I
3 rephrase that?

4 Q: Sure.

5 A: I found the ad in the laundry mat, I
6 was doing laundry and found that.

7 Q: Okay. And I forgot to ask you this
8 earlier; have you ever given a deposition
9 before, sir?

10 A: No, I haven't.

11 Q: Okay. Let me go over some ground
12 rules. Obviously we have a Court Reporter
13 here, everything needs to be oral, I'm sure
14 your attorney went over this, nods of the head,
15 shakes of the head do not come across well. I
16 will try not to talk over you and try not to
17 talk over me, although we may know exactly what
18 we're getting at.

19 A: Okay.

20 Q: And if you answer any of my questions,
21 I'll assume that you understood that, is that
22 fair?

23 A: Yes, sir.

24 Q: And if you don't understand it, or
25 need me to repeat it, just let me know.

*Gore Perry Gateway Lipa Baker Dunn & Butz
St. Louis 314.241.6750 St. Charles 636.940.0926*

1 A: Okay.
 2 Q: And if you need to take a break at any
 3 time, just let me know, okay?
 4 A: Okay.
 5 Q: Okay. Did you sign a written lease
 6 for this duplex?
 7 A: No, I didn't.
 8 Q: This is a month to month lease?
 9 A: Correct.
 10 Q: Is it an oral lease?
 11 A: Yes, sir.
 12 Q: Can you describe for me how this lease
 13 was formed? What did you say to her, how did
 14 you come to an agreement that it was a month to
 15 month lease?
 16 A: She said that she prefers not to have
 17 a long-term lease, that she would rather go
 18 month to month, that way either one of us can
 19 get out of it without any penalties.
 20 Q: Did she ever ask you to sign a written
 21 lease?
 22 A: No, she didn't.
 23 Q: Okay. You state in your
 24 Interrogatories that you moved in on October
 25 27th, 2006, does that sound accurate?

*Gore Perry Gateway Lipa Baker Dunn & Butz
 St. Louis 314.241.6750 St. Charles 636.940.0926*

1 A: That would be pretty close.
 2 Q: Okay.
 3 A: I don't remember dates well, excuse
 4 me.
 5 Q: Okay. So it's been about 17, 18 days
 6 you've been at that duplex?
 7 A: About that.
 8 Q: What do you pay?
 9 A: 250 a month.
 10 Q: Okay. Obviously your first payment is
 11 coming up?
 12 A: This next month.
 13 Q: Yes. Have you made a payment yet?
 14 A: Yes.
 15 Q: How did you make that first payment,
 16 by check, by cash?
 17 A: Cash.
 18 Q: Did your land lady say that she wants
 19 cash?
 20 A: She prefers cash, she will take a
 21 check if I have to.
 22 Q: Okay. What day of the month is your
 23 rent due?
 24 A: A month from the day I moved in, was
 25 that the 17th?

*Gore Perry Gateway Lipa Baker Dunn & Butz
 St. Louis 314.241.6750 St. Charles 636.940.0926*

1 Q: 27th according to your
 2 Interrogatories.
 3 A: 27th.
 4 Q: Okay. Do you intend to remain at this
 5 residence permanently?
 6 A: Yes, I do.
 7 Q: Do you remember what day you saw that
 8 ad in the laundry mat?
 9 A: Not right off, it was two or three
 10 days before I got the duplex, that would have
 11 made it the 23rd or the 24th.
 12 Q: So, it's your best recollection that
 13 you found the ad on October 23rd or October
 14 24th and moved in approximately three to four
 15 days thereafter?
 16 A: Correct.
 17 Q: Is it fair to state that you did not
 18 find that laundry mat ad before October 13th,
 19 2006?
 20 A: Oh, no.
 21 Q: Okay. Have you informed anyone other
 22 than your attorney of your new address?
 23 A: No.
 24 Q: Have you informed your family or
 25 friends?

*Gore Perry Gateway Lipa Baker Dunn & Butz
 St. Louis 314.241.6750 St. Charles 636.940.0926*

1 A: My dad knows where I'm at, but he's
 2 down in Texas and didn't really need the
 3 address.
 4 Q: Okay. Now, you stated in your
 5 Interrogatories that you stayed with various
 6 friends and family over the past six months.
 7 Did you inform those friends and family of your
 8 new address?
 9 A: No.
 10 Q: Your Answers to Interrogatories you
 11 gave a list of where you've been living since
 12 April of '06, and according to your
 13 Interrogatories, the first time you moved in to
 14 Missouri was the 14 Ridgeview Court, St.
 15 Charles, Missouri?
 16 A: Correct.
 17 Q: You moved there approximately August
 18 15, 2006?
 19 A: Yes.
 20 Q: Is that correct?
 21 A: Yes, sir.
 22 Q: Is that the first time you've ever
 23 lived in Missouri?
 24 A: Yes, it is.
 25 Q: Okay. Is it fair to say that prior to

*Gore Perry Gateway Lipa Baker Dunn & Butz
 St. Louis 314.241.6750 St. Charles 636.940.0926*

1 that address, you've never had any residence,
 2 temporary or otherwise, in Missouri?
 3 A: Correct.
 4 Q: That was a temporary address?
 5 A: I'm sorry?
 6 Q: And then St. Charles, Missouri at the
 7 14 Ridgeview Court, that was a temporary
 8 address?
 9 A: Yes, it was.
 10 Q: Prior to living at Boonslick Road, you
 11 lived at 817 Randolph in Elsberry, Missouri?
 12 A: Correct.
 13 Q: How long did you live there?
 14 A: Approximately three weeks.
 15 Q: Why did you move?
 16 A: It didn't work out.
 17 Q: When you say it did not work out, what
 18 do you mean?
 19 A: I believe it was personality clash
 20 between me and Leah.
 21 Q: And you say Leah, that would be Leah
 22 Fennell the landlord?
 23 A: Leah Fennell.
 24 Q: Okay. Do you know what date you moved
 25 in?

*Gore Perry Gateway Lipa Baker Dunn & Butz
 St. Louis 314.241.6750 St. Charles 636.940.0926*

1 A: I'm not good with dates.
 2 Q: Okay. You state in your
 3 Interrogatories that you moved in approximately
 4 October 3rd, 2006, does that sound correct?
 5 A: That, that's a lot closer to what I
 6 could have come up with off the top of my head.
 7 Q: Okay. And you lived at that residence
 8 until October 27th when you moved into the
 9 Boonslick Road address?
 10 A: Correct.
 11 Q: Okay. Did you live with anyone at
 12 that address?
 13 A: At the 817.
 14 Q: At the 817 address.
 15 A: The land lady was staying there, I was
 16 sharing the house with her.
 17 Q: Leah Fennell was a woman?
 18 A: Yes.
 19 Q: Okay. Was that an apartment, house?
 20 A: It's a house.
 21 Q: Okay. Just for a second, going back
 22 to your Boonslick Road address, do you have a
 23 phone service set up?
 24 A: No, I've got a cell phone.
 25 Q: How long have you had a cell phone?

*Gore Perry Gateway Lipa Baker Dunn & Butz
 St. Louis 314.241.6750 St. Charles 636.940.0926*

1 A: About two or three months.
 2 Q: Where did you, what service do you
 3 have for that cell?
 4 A: Cingular, it's prepaid though.
 5 Q: What do you mean it's prepaid?
 6 A: I get a card at a Wal-Mart or a
 7 Cingular store and put time on my phone.
 8 Q: Do you punch in a code, is that how
 9 the phone recognizes you have time?
 10 A: Uh-huh.
 11 Q: Yes?
 12 A: Yes.
 13 Q: Have you received any statement from
 14 Cingular regarding your phone?
 15 A: No.
 16 Q: Okay. When you purchased the cell
 17 phone, did you, what store did you go to?
 18 Where did you purchase it from?
 19 A: I already had the phone, I purchased
 20 the service from Wal-Mart.
 21 Q: Where is that Wal-Mart located?
 22 A: St. Charles.
 23 Q: St. Charles, Missouri?
 24 A: Correct.
 25 Q: Is that approximately two or three

*Gore Perry Gateway Lipa Baker Dunn & Butz
 St. Louis 314.241.6750 St. Charles 636.940.0926*

1 months ago, that would be sometime in August or
 2 September of '06?
 3 A: Yes.
 4 Q: You say you already had the phone,
 5 what do you mean by that?
 6 A: Me and my fiance, before she passed
 7 away, had regular Cingular service, and I found
 8 out that the prepaid chips would work in there.
 9 Q: What was your fiance's name?
 10 A: Gretchen R. Dayment, D-A-Y-M-E-N-T.
 11 Q: And you two had a Cingular Wireless
 12 account?
 13 A: Yes, sir.
 14 Q: Okay. That Cingular Wireless account,
 15 when did you open that account, you and your
 16 fiance?
 17 A: Probably around July of '05.
 18 Q: Where were you living in July of '05?
 19 A: In Granite City, Illinois.
 20 Q: When did you move from Granite City,
 21 Illinois?
 22 A: Three weeks after my fiance passed
 23 away, she died April 5th and the end of the
 24 month I moved to Texas.
 25 Q: April 5th of '06?

*Gore Perry Gateway Lipa Baker Dunn & Butz
 St. Louis 314.241.6750 St. Charles 636.940.0926*

A: Yes.

Q: And that's where in the past six months you've gone from address to address to address until this now permanent address at Boonslick Road?

A: Correct.

Q: Okay. Is it fair to say that when you lived in Granite City with your fiancé, that was your permanent address until the unfortunate events of your fiancé's passing?

A: Yes.

Q: How long did you live in Granite City?

A: Six years.

Q: While you lived in Granite City for those six years, that would have been from about 2000 until April of 2006?

A: Yes.

Q: Did you guys own -- sorry. Did you and your fiancé own or rent a home?

A: Rent.

Q: Do you remember the address?

A: 3901 Village Lane, Apartment C.

Q: Did you and your fiancé live in that apartment for six years?

A: Almost, we got a duplex six months

*Gore Perry Gateway Lipa Baker Dunn & Butz
St. Louis 314.241.6750 St. Charles 636.940.0926*

before she died or five months before she died.

Q: Where was that duplex located?

A: 3102 Wilshire.

Q: What city is that?

A: Granite City.

Q: So you still stayed in Illinois?

A: I'm sorry.

Q: You still stayed in Illinois?

A: Yes.

Q: Okay. And as long as your fiancé was alive, you two had plans to permanently stay in Illinois and reside there, correct?

MR. HENDRICKSON: Objection, his intent prior to the filing of this suit and prior to the removal is irrelevant. You can go ahead and answer.

A: Would you restate the question?

Q: (By Mr. Relihan) Sure. Prior to your fiancé's death, you and her intended to remain permanently in Illinois, in and around the Granite City, Illinois area?

A: Yes.

Q: Okay. Is it fair to state that from April 5th, 2006 until October 27th, 2006 when you moved into the Boonslick Road address, that

*Gore Perry Gateway Lipa Baker Dunn & Butz
St. Louis 314.241.6750 St. Charles 636.940.0926*

you did not have any permanent residence?

A: That's true.

Q: Moving back to the 817 Randolph, Elsberry, Missouri address, in your Answers you said you met Ms. Fennell through your cousin?

A: Correct.

Q: What's your cousin's name?

A: Billy Fennell.

Q: Was Leah his sister?

A: His exwife.

Q: Okay. How long had you known Leah Fennell?

A: About a month and a half.

Q: You paid \$300 per month while you were at that address?

A: Yes.

Q: Did you pay that up front?

A: Yes, sir, I did.

Q: Did you pay that in cash?

A: Yes, I did.

Q: Did you sign any lease?

A: No, I didn't.

Q: When you lived at the Granite City apartment, 3901 Village Lane, did you sign a written lease for that?

*Gore Perry Gateway Lipa Baker Dunn & Butz
St. Louis 314.241.6750 St. Charles 636.940.0926*

A: I didn't, my fiancé had that apartment when I moved to Granite City.

Q: Do you know if she signed a written lease?

A: Yes, she did.

Q: Where did you live prior to moving in with your fiancé at the Village Lane apartment?

MR. HENDRICKSON: Objection, irrelevant, too remote in time. You can go ahead and answer.

WITNESS: Okay.

A: Mainly in motels, I was with the railroad, contracted with the railroad and moved all over the country.

Q: (By Mr. Relihan) When you and your fiancé moved into the duplex at 3102 Wilshire, did you and your fiancé sign a lease?

A: Yes.

Q: How long was that lease for?

A: Six months.

Q: When you moved from the Wilshire apartment to Texas, had that lease expired at the Wilshire duplex?

A: It would in another three or four days from the time I moved.

*Gore Perry Gateway Lipa Baker Dunn & Butz
St. Louis 314.241.6750 St. Charles 636.940.0926*

1 Q: Okay. So you've seen a written lease
2 for an apartment and know what one is?
3 A: Yes.
4 Q: Okay. At the 817 Randolph address,
5 did you intend to remain there permanently when
6 you moved there?
7 A: Yes.
8 Q: However did you not remain there
9 permanently?
10 A: No.
11 Q: When did the trouble with Ms. Fennell
12 start? When did you guys start having issues
13 when you moved in?
14 A: Probably the first, it happened within
15 the first three or four days.
16 Q: At that point, did you know you had to
17 find another place to live?
18 A: No, I thought I'd work through it.
19 Q: Do you remember what day it became,
20 got to the point where you knew you couldn't
21 work through it?
22 A: It had to have been around the 20th or
23 21st.
24 Q: I'm going to show you what's a part
25 of, what's been marked as Exhibit 3,

Gore Perry Gateway Lipa Baker Dunn & Butz
St. Louis 314.241.6750 St. Charles 636.940.0926

1 months prior to today's dates, since the death
2 of your fiance, you have not had any permanent
3 residences other than the one at Boonslick
4 Road?
5 A: Correct.
6 Q: Okay.
7 MR. HENDRICKSON: I'll object, I think
8 he already said that he intended at the time
9 for it to be a permanent residence at 817
10 Randolph. Is that true?
11 WITNESS: That's true.
12 Q: (By Mr. Relihan) You stated in
13 Paragraph 6 that you entered into a long-term
14 lease concerning the property, is that true?
15 A: Yes, sir.
16 Q: Okay. Is that an oral or written
17 lease?
18 A: Oral.
19 Q: How long of a term for that lease?
20 A: One year.
21 Q: Do you have any proof of that oral
22 agreement?
23 A: Just my word.
24 Q: And you were to pay \$300 a month?
25 A: Yes.

Gore Perry Gateway Lipa Baker Dunn & Butz
St. Louis 314.241.6750 St. Charles 636.940.0926

1 Plaintiff's Motion to Remand of Donald
2 Canterbury, have you seen that before, sir?
3 A: Yes, I have.
4 Q: Is that your signature on the second
5 page of that affidavit?
6 A: Yes.
7 Q: Did you review that affidavit prior to
8 signing it?
9 A: Yes, I did.
10 Q: Are those truthful statements in that
11 affidavit?
12 A: Yes, they are.
13 Q: Okay. Turning to Paragraph 3, as of
14 September 13th, 2006, you were temporarily
15 residing in St. Charles, Missouri?
16 A: Correct.
17 Q: Okay. That wasn't your permanent
18 address?
19 A: Huh-uh.
20 Q: That wasn't your permanent address?
21 A: No.
22 Q: You had no intention for that to be
23 your permanent address?
24 A: No.
25 Q: Okay. Is it fair to say in the six

Gore Perry Gateway Lipa Baker Dunn & Butz
St. Louis 314.241.6750 St. Charles 636.940.0926

1 Q: Do you have any statements or letters
2 or anything in writing to document that
3 long-term lease?
4 A: No, I don't.
5 Q: Okay. And you state in Paragraph 5
6 that you had no permanent residences in
7 Illinois and Texas from April 2006 to today's
8 date?
9 A: Correct.
10 Q: But prior to April 2006 you had a
11 permanent residence in Illinois, correct?
12 A: Correct.
13 Q: Okay. And you intended to live there
14 permanently with your fiance?
15 A: Yes.
16 MR. HENDRICKSON: Objection.
17 Correction intended at what point; in April of
18 2006?
19 MR. RELIHAN: Yes.
20 Q: (By Mr. Relihan) Prior to the death
21 of your fiance, you intended to remain
22 permanently in Illinois?
23 A: Yes.
24 Q: Okay. And prior to the Boonslick Road
25 address, you have not had a permanent address?

Gore Perry Gateway Lipa Baker Dunn & Butz
St. Louis 314.241.6750 St. Charles 636.940.0926

A: Other than 817 Randolph.

Q: Well, that wasn't a permanent residence, was it?

MR. HENDRICKSON: The question is one of intent.

Q: (By Mr. Relihan) My question was; that was not a permanent residence?

A: It would have been if everything had worked out right.

Q: I understand. But that was not a permanent residence, correct?

A: Well, yes, I thought it was.

Q: I understand what you thought it was.

MR. HENDRICKSON: Objection, asked and answered.

MR. RELIHAN: It has not been answered. His thoughts are irrelevant. My question is simple.

Q: (By Mr. Relihan) That was not a permanent address for you?

A: Yes, it was.

MR. HENDRICKSON: No address -- objection, objection. You're repeatedly asking the same question, he's answered it to the best of his ability. You're asking about

permanency, permanency is a matter of intent, he has answered you as to his intent at the time he took up residence there.

MR. RELIHAN: Counsel, as you know speaking objections are not allowed. My question is simple.

Q: (By Mr. Relihan) Looking back and as that address, intent aside, that did not remain a permanent address?

MR. HENDRICKSON: Objection, improper question. Don't answer. I'm going to instruct you not to answer, it's already been asked and answered about five times.

Q: (By Mr. Relihan) Sir, do you understand my question?

A: Yes.

Q: Are you going to answer my question?

MR. HENDRICKSON: No.

A: No.

Q: (By Mr. Relihan) Are you not answering that question on the advice of your counsel?

A: Yes.

MR. RELIHAN: Would you certify that question, please.

Gore Perry Gateway Lipa Baker Dunn & Butz
St. Louis 314.241.6750 St. Charles 636.940.0926

Gore Perry Gateway Lipa Baker Dunn & Butz
St. Louis 314.241.6750 St. Charles 636.940.0926

COURT REPORTER: Yes.

Q: (By Mr. Relihan) You had a year lease at that Elsberry address, correct?

A: Correct.

Q: And that was an oral lease, correct?

A: Correct.

Q: You did not stay at that residence for that full year that you had an oral lease for, correct?

A: That's correct.

Q: Okay. Did you pay a security deposit?

A: Yes, I did.

Q: Okay. How much was that security deposit?

A: \$500.

Q: Did you receive that security deposit back?

A: Yes, I did.

Q: Did you receive any of the \$300 you paid initially back?

A: No.

Q: Did you pay any penalty for breaking the oral lease?

A: No.

Q: Okay. Looking at the affidavit, who

Gore Perry Gateway Lipa Baker Dunn & Butz
St. Louis 314.241.6750 St. Charles 636.940.0926

drafted that affidavit, sir?

MR. HENDRICKSON: I'll stipulate that I did.

MR. RELIHAN: Okay.

Q: (By Mr. Relihan) When you signed that affidavit, did you receive both pages?

A: Yes, I did.

Q: And when you signed it, did you sign it in the presence of your attorney?

A: Yes, I did.

Q: Okay. And you signed it on October 20th, 2006?

A: Yes.

Q: Okay. Isn't it true that on October 20th, 2006, you were aware that it was not going to work out, that you were going to stay at the Elsberry address?

A: I'm sorry?

Q: Okay. You testified earlier that on approximately October 20th, 2006, you realized it was not going to work out at the Elsberry address?

A: Right.

Q: And on that date you signed an affidavit stating and testifying that you

Gore Perry Gateway Lipa Baker Dunn & Butz
St. Louis 314.241.6750 St. Charles 636.940.0926

1 intended to remain at the Elsberry address
2 permanently, correct?

3 MR. HENDRICKSON: Are you sure on the
4 dates?

5 MR. RELIHAN: Counsel --

6 A: I'm not positive on the dates of when
7 that happened.

8 Q: (By Mr. Relihan) Okay. But if we
9 take your prior testimony as being October
10 20th, 2006, if that was the date that you were
11 aware that you were not going to stay at the
12 Elsberry address, would your affidavit then be
13 correct?

14 A: Yes.

15 Q: Okay. So it would be correct that you
16 intended to remain permanently at an address
17 that you knew on that date -- strike the
18 question. So on October 20th, 2006, we assume
19 for this question that you knew you were not
20 going to stay at the Elsberry address.

21 MR. HENDRICKSON: Objection, improper
22 hypothetical. You're asking him to assume
23 facts that are not in evidence.

24 MR. RELIHAN: Well, unfortunately
25 counsel, he's testified that October 20th, 2006

*Gore Perry Gateway Lipa Baker Dunn & Butz
St. Louis 314.241.6750 St. Charles 636.940.0926*

1 might have been the day that he realized --

2 MR. HENDRICKSON: Might have been.
3 Why don't you ask him again if it was the day.

4 MR. RELIHAN: That was to the best of
5 his recollection, that's how he answered the
6 question.

7 Q: (By Mr. Relihan) Now I'm asking a
8 hypothetical; that if on October 20th, 2006,
9 you knew you were not going to remain at the
10 Elsberry address, that it had become too
11 difficult, would it, in fact, then be signing
12 that affidavit on that day make that affidavit
13 incorrect?

14 MR. HENDRICKSON: Assuming all of the
15 facts that you've just stated whether they're
16 true or not?

17 MR. RELIHAN: The question is simple
18 and if he understands the question, he can
19 answer it.

20 MR. HENDRICKSON: Do you understand
21 the question?

22 WITNESS: I really don't.

23 Q: (By Mr. Relihan) Okay, I'll repeat
24 it. Assume for a fact that on October 20th,
25 2006 you knew you were not going to remain at

*Gore Perry Gateway Lipa Baker Dunn & Butz
St. Louis 314.241.6750 St. Charles 636.940.0926*

1 the Elsberry address, okay?

2 A: (Witness nods)

3 Q: Can you assume that?

4 A: I can assume that.

5 Q: Okay. Now we know by signing that
6 affidavit, you signed it on October 20th, 2006,
7 correct?

8 A: Correct.

9 Q: That is true, that is in writing,
10 correct?

11 A: This part is true, but I'm not certain

12 --

13 Q: I understand. I just want you to go
14 and I'm trying to establish my hypothetical so
15 you understand it. If we assume that on
16 October 20th, 2006, you knew you were not going
17 to stay at the Elsberry address, but on October
18 20th, 2006 you signed an affidavit asserting
19 and testifying that you were going to remain at
20 that Elsberry address permanently, would that
21 make your affidavit incorrect?

22 MR. HENDRICKSON: Objection, improper
23 hypothetical, assumes facts not in evidence.
24 You're asking him to assume facts that he
25 hasn't testified to, otherwise you can answer

*Gore Perry Gateway Lipa Baker Dunn & Butz
St. Louis 314.241.6750 St. Charles 636.940.0926*

1 it, if you can.

2 A: I don't think that I signed this prior
3 to me moving out, I know it was a Wednesday
4 morning when I moved out, but I had thoughts
5 that we might patch things up, and I could go
6 back up there and that didn't happen.

7 Q: (By Mr. Relihan) All right, sir.
8 That's not answering my question. I'll
9 establish the hypothetical again and we'll go
10 through this.

11 MR. HENDRICKSON: Can I have a running
12 objection.

13 MR. RELIHAN: Sure.

14 Q: (By Mr. Relihan) Assuming again that
15 on October 20th, 2006, you knew it was not
16 going to work out at the Elsberry address,
17 okay?

18 A: Okay.

19 Q: Assume that, we know on October 20th,
20 2006, you signed an affidavit stating that the
21 Elsberry address was going to be your permanent
22 address, correct?

23 A: Correct.

24 Q: If those two facts are true, would it
25 then make your affidavit incorrect?

*Gore Perry Gateway Lipa Baker Dunn & Butz
St. Louis 314.241.6750 St. Charles 636.940.0926*

1 A: I don't know how to answer that.
 2 Q: It's a simple yes or no answer.
 3 MR. HENDRICKSON: Actually there's
 4 nothing simple about that question considering
 5 it's an improper hypothetical.
 6 Q: (By Mr. Relihan) Sir, would -- if
 7 those two facts are true, that on October 20th,
 8 2006, we're assuming this fact, that you knew
 9 you were not going to remain at the Elsberry
 10 address, and on that same day, October 20th,
 11 2006, which is in writing, you signed an
 12 affidavit stating you intended to remain with a
 13 long-term lease at the Elsberry address, if
 14 those two facts are true, would it then make
 15 your affidavit incorrect?
 16 A: If those two facts are true, yes.
 17 Q: Okay. When you lived at the 817 --
 18 strike that question. You testified earlier
 19 that the 14 Ridgeview Court in St. Charles,
 20 Missouri was a temporary address?
 21 A: Yes.
 22 Q: You did not intend that to be your
 23 permanent address?
 24 A: No, I didn't.
 25 Q: Who were you staying with?

*Gore Perry Gateway Lipa Baker Dunn & Butz
 St. Louis 314.241.6750 St. Charles 636.940.0926*

1 A: My cousin.
 2 Q: Okay. What was your cousin's name?
 3 A: Billy Fennell.
 4 Q: Did he live in St. Charles?
 5 A: Correct.
 6 Q: You were just staying there until you
 7 found something --
 8 A: Yes.
 9 Q: -- a place to stay?
 10 A: Yes.
 11 Q: Prior to that, you lived at 62 Mallard
 12 Drive in Pontoon Beach, Illinois?
 13 A: Yes.
 14 Q: You stayed there for approximately two
 15 months?
 16 A: Six weeks to two months, something
 17 like that.
 18 Q: Were you staying with anyone?
 19 A: Yes.
 20 Q: Who were you staying with?
 21 A: Alan Shepherd and Patty Branch.
 22 Q: Are they relatives of yours?
 23 A: No.
 24 Q: Are they friends of yours?
 25 A: Yes.

*Gore Perry Gateway Lipa Baker Dunn & Butz
 St. Louis 314.241.6750 St. Charles 636.940.0926*

1 Q: This again was a temporary address?
 2 A: Yes, it was.
 3 Q: Why did you move from the Pontoon
 4 Beach to your cousin's house in St. Charles,
 5 Missouri?
 6 A: How do I answer that? My cousin felt
 7 like people over in Granite City was trying to
 8 use me and he wanted to get me away from there.
 9 Q: So, on your cousin's advice, you moved
 10 in with him?
 11 A: Yes.
 12 Q: He offered his residence?
 13 A: Yes.
 14 Q: Prior to his offer, you had no
 15 intention of going to live with your cousin?
 16 A: No.
 17 Q: You intended to stay with your friends
 18 Alan Shephard and Patty Branch until you found
 19 something else?
 20 A: Correct.
 21 Q: Did you have an agreement that you
 22 were going to stay a year, a couple months or
 23 however long you needed?
 24 A: Just short-term.
 25 Q: Okay. Was Alan Shephard and Patty

*Gore Perry Gateway Lipa Baker Dunn & Butz
 St. Louis 314.241.6750 St. Charles 636.940.0926*

1 Branch using you?
 2 A: I don't think so.
 3 Q: If you didn't think they were using
 4 you, but your cousins did, why did you go ahead
 5 and move in with your cousin?
 6 A: Because he's family.
 7 Q: So the sole, or the decision to move
 8 in with your cousin was based on his offer and
 9 that he's family?
 10 A: Correct.
 11 Q: Okay. Were there any other reasons
 12 for moving in with your cousin in St. Charles,
 13 Missouri?
 14 A: No.
 15 Q: Prior to that, you lived at 5445
 16 Maryville Road in Granite City, Illinois?
 17 A: Right.
 18 Q: Who did you live there with?
 19 A: A friend of mine, Peggy Zigan.
 20 Q: Do you know how to spell her last
 21 name?
 22 A: Z-I-G-A-N.
 23 Q: She's a friend of yours?
 24 A: Yes.
 25 Q: How long did you live there?

*Gore Perry Gateway Lipa Baker Dunn & Butz
 St. Louis 314.241.6750 St. Charles 636.940.0926*

1 A: Probably right around a month, right
 2 around a month.
 3 Q: Why did you move?
 4 A: Patty and Alan offered me, I was
 5 sleeping on the couch at Peggy's and they
 6 offered me a bed.
 7 Q: Better sleeping arrangements, so you
 8 took it?
 9 A: Yes.
 10 Q: Were you paying any rent when you were
 11 living at the Maryville Road address?
 12 A: No.
 13 Q: Did you pay any rent to Patty or Alan?
 14 A: No.
 15 Q: Prior to that, you lived at 8321 North
 16 Loop in El Paso, Texas?
 17 A: Right.
 18 Q: You lived with your father?
 19 A: Yes.
 20 Q: You were there for about a month?
 21 A: Yes, sir.
 22 Q: Do you know what date you moved there?
 23 A: I think we pulled into town May 5th.
 24 Q: Okay. And this was after the death of
 25 your fiancé?

*Gore Perry Gateway Lipa Baker Dunn & Butz
 St. Louis 314.241.6750 St. Charles 636.940.0926*

1 A: Correct.
 2 Q: Did you pay any rent?
 3 A: It wasn't really rent, I helped him
 4 out with expenses.
 5 Q: What expenses did you help him out
 6 with?
 7 A: Food, electric.
 8 Q: Why did you move from El Paso to
 9 Granite City, Illinois?
 10 A: Because the memories I ran away from I
 11 decided I needed to come back up.
 12 Q: Did you have, when you decided to
 13 leave El Paso, Texas, did you have a place to
 14 stay in Illinois?
 15 A: Yes.
 16 Q: Okay. And that was?
 17 A: Peggy Zigan.
 18 Q: Okay. And prior to the El Paso, Texas
 19 address, you lived at the 3301 Wilshire?
 20 A: Correct.
 21 Q: That's a duplex --
 22 A: Yes.
 23 Q: -- that you and your fiancé signed a
 24 lease for?
 25 A: Yes.

*Gore Perry Gateway Lipa Baker Dunn & Butz
 St. Louis 314.241.6750 St. Charles 636.940.0926*

40

1 Q: Do you remember the landlord?
 2 A: I remember his first name is Dave, I
 3 don't remember what his last name is.
 4 Q: And you found this in the newspaper?
 5 A: Correct.
 6 Q: You paid \$575 a month?
 7 A: Yes, sir.
 8 Q: Do you have a copy of that lease
 9 still?
 10 A: No, I don't.
 11 Q: In your complaint, the date of the
 12 alleged negligence is September 27, 2004, where
 13 were you living at that time?
 14 A: 3901 Village Lane, Apartment C.
 15 Q: That was that five year span at that,
 16 at your fiancé's apartment?
 17 A: Correct.
 18 Q: That you and her shared together after
 19 you moved in?
 20 A: Yes.
 21 Q: At that Wilshire address, were any
 22 bills in your name?
 23 A: No, they weren't.
 24 Q: Were all utilities in her name?
 25 A: Yes, they were.

*Gore Perry Gateway Lipa Baker Dunn & Butz
 St. Louis 314.241.6750 St. Charles 636.940.0926*

41

1 Q: The Cingular account you had with your
 2 fiancé, was that in her name or your name?
 3 A: Her name.
 4 Q: Although no bills were in your name,
 5 the utilities that -- or strike that. The
 6 utilities that were, that you had to pay for at
 7 that apartment, did you contribute to pay for
 8 those utilities?
 9 A: Yes, I did.
 10 Q: The utilities that you did receive,
 11 did they go to that Wilshire address, were they
 12 sent to that address?
 13 A: Yes.
 14 Q: Okay.
 15 MR. HENDRICKSON: You mean the bills?
 16 MR. RELIHAN: Yes, the utility bills.
 17 Sorry.
 18 Q: (By Mr. Relihan) Did you and your
 19 fiancé have a joint checking account?
 20 A: No, we didn't.
 21 Q: Did you each have separate checking
 22 accounts?
 23 A: No.
 24 Q: Did she have a checking account?
 25 A: Yes, she did.

*Gore Perry Gateway Lipa Baker Dunn & Butz
 St. Louis 314.241.6750 St. Charles 636.940.0926*

1 Q: You had no checking account?

2 A: No, I didn't.

3 Q: Prior to the injury in this case, were

4 you earning any income?

5 A: Yes, I was.

6 Q: Did you deposit, were you paid by cash

7 or check?

8 A: Check.

9 Q: Okay. When you received a check from

10 your employer, who was your employer at that

11 time, if you can remember?

12 A: It's Aerospace something, it was a

13 temp employer.

14 Q: Where are they located?

15 MR. HENDRICKSON: I'm going to object.

16 We're getting pretty far afield of citizenship

17 and residency.

18 MR. RELIHAN: I'm trying to wrap it

19 up. I understand.

20 MR. HENDRICKSON: All right.

21 Q: (By Mr. Relihan) Do you know where

22 they're located?

23 A: In St. Louis.

24 Q: Okay. Was there an office in St.

25 Louis you went to or was there an office in

Gore Perry Gateway Lipa Baker Dunn & Butz
St. Louis 314.241.6750 St. Charles 636.940.0926

1 Illinois?

2 A: No, the office was in St. Louis.

3 Q: When you get a check from this

4 employer, would you then sign it over and your

5 wife would deposit it in that account?

6 A: Yes.

7 Q: Okay. Did you ever want to put your

8 name on that checking account?

9 A: No.

10 Q: Are you currently registered to vote?

11 A: No, I'm not.

12 Q: You state in your Interrogatories you

13 last registered to vote in Texas in 1980?

14 A: Yes.

15 Q: Are you still registered there?

16 A: No.

17 Q: Have you gone in and unregistered

18 yourself in Texas?

19 A: No.

20 Q: Okay. Have you registered in any

21 other state to vote?

22 A: No, I'm not.

23 Q: Have you attempted to register to vote

24 in Missouri?

25 A: No.

Gore Perry Gateway Lipa Baker Dunn & Butz
St. Louis 314.241.6750 St. Charles 636.940.0926

1 Q: Now, according to your affidavit, it

2 states that you attempted to establish

3 permanent domicile on October 4th, 2006, which

4 was more than 30 days prior to this November's

5 election, correct?

6 A: Yes.

7 Q: Did you have no desire to vote in this

8 election?

9 A: That's right.

10 Q: Therefore, you never registered to

11 vote in Missouri?

12 A: Correct.

13 Q: Do you currently have a Bank of

14 America account?

15 A: Yes.

16 Q: All right. I'm going to show you your

17 supplemental response to Request to Produce,

18 and I ask you to turn to the back page, is that

19 a copy of the blank check?

20 A: Yes.

21 Q: Okay. And when you applied for this

22 account, you gave the St. Charles address?

23 A: Yes.

24 Q: Okay. Before we go any further, do

25 you have a driver's license?

Gore Perry Gateway Lipa Baker Dunn & Butz
St. Louis 314.241.6750 St. Charles 636.940.0926

1 A: No, I don't.

2 Q: Do you have a state ID?

3 A: Yes, I do.

4 Q: May I see it? And you can show it to

5 your counsel first.

6 A: Okay.

7 Q: For the record, I'm looking at an

8 Illinois ID card No. 53619952171C, issued on

9 9/9/'03, expiring 6/16/'09, with an address of

10 Donald W. Canterbury at 3901 Village Lane,

11 Apartment C, Granite City, Illinois 62040.

12 Sir, prior to this past six months of moving to

13 temporary addresses, how long had you been in

14 Illinois?

15 A: Since 2000.

16 Q: Okay.

17 A: August of 2000.

18 Q: And you applied for and were issued an

19 Illinois ID card, correct?

20 A: (Witness nods)

21 Q: Correct?

22 A: Correct.

23 Q: Now, it says that that one was issued

24 on 9/9/'03, did you have a prior ID card prior

25 to that?

Gore Perry Gateway Lipa Baker Dunn & Butz
St. Louis 314.241.6750 St. Charles 636.940.0926

A: No, I didn't.

Q: Okay. What did you use when you went to apply for this ID card, what forms of information did you give the Secretary of State?

MR. HENDRICKSON: I'm going to object, again this is irrelevant. We're talking about September '03, it's well before any of the events of this case and it's certainly before any relevant dates to the Motion to Remand. You can go ahead and answer.

A: My mother was alive at that time and she sent me my birth certificate.

Q: (By Mr. Relihan) At that time did you have any driver's license or ID cards from any other state?

A: No.

Q: Is it fair to say that when you applied -- that's only a checking account, correct?

A: Correct.

Q: When you applied for the checking account, you showed them your Illinois ID?

A: Yes.

Q: Okay. How long have you had this

checking account?

A: Since 9 of '06.

Q: Okay. And since September of '06, you have not received any bank statements?

A: No, I haven't.

Q: Have you requested to receive bank statements?

A: No, I haven't had any money to put in there yet.

Q: Well, even without any money, they have not sent you "you have a checking account with a zero balance", you have not made any transaction?

A: I haven't received anything yet.

Q: Have you called to ask them "are you going to send me any bank statements"?

A: No.

Q: Okay. Do you check your account online or anything?

A: No, I don't, not yet.

Q: When did you receive your checks?

A: 9/'06, I guess.

Q: Prior to this Bank of America checking account, did you have any checking accounts?

A: No.

Gore Perry Gateway Lipa Baker Dunn & Butz
St. Louis 314.241.6750 St. Charles 636.940.0926

Gore Perry Gateway Lipa Baker Dunn & Butz
St. Louis 314.241.6750 St. Charles 636.940.0926

Q: After your fiance died and there was this six months, almost five months without, before you opened up this account, where did you keep your money?

A: In my pocket.

Q: Okay. All cash?

A: Yes.

Q: Okay. You do not belong to any memberships or clubs?

A: No, I don't.

Q: Okay. Have you applied to any in Missouri?

A: Nope.

Q: When you lived at the Elsberry address, did you apply to any clubs?

A: No.

Q: Are you currently employed?

A: No, I'm not.

Q: When was the last time you were employed?

A: June of '04.

Q: Was that through Areospace?

A: Correct.

Q: Have you applied for any jobs in Missouri?

A: No.

Q: Have you applied for any jobs anywhere else?

A: No, I haven't.

Q: Is it fair to say then in the past six months since April of 2006, you haven't applied for any jobs?

A: That's correct.

Q: Are you on any disability, sir?

A: Yes, I am.

Q: Okay. Is that how you afford to pay your rent?

A: Correct.

Q: Okay. Do you receive a check every month?

A: Yes.

Q: When did you start receiving those checks?

A: I believe in February, this year.

Q: And so in February you would send them over to your fiance and she would deposit them in the checking account?

A: Yes.

Q: After her death, you would receive a check, you would endorse it and then go to a

Gore Perry Gateway Lipa Baker Dunn & Butz
St. Louis 314.241.6750 St. Charles 636.940.0926

Gore Perry Gateway Lipa Baker Dunn & Butz
St. Louis 314.241.6750 St. Charles 636.940.0926

1 credit union, bank, some form and get straight
2 cash from it?

3 A: Actually I have a, I have a cash pay
4 credit card that Social Security direct
5 deposits in there and it's like an ATM card,
6 but it's, that's all I've got.

7 Q: So, it's fair to state that instead of
8 receiving an actual check, Social Security puts
9 it directly into this account which is linked
10 to this credit card and you use it as an ATM
11 card?

12 A: Correct.

13 Q: When did you receive that card?

14 A: When I worked for Aerospace, they set
15 it up so I could get my pay through there.

16 Q: So Aerospace set up this account that
17 is now linked to your Social Security
18 disability benefits?

19 A: Correct.

20 Q: Okay. I'm assuming since you've not
21 applied for any jobs, you don't have any resume
22 that you've sent out or anything?

23 A: No.

24 Q: That's correct?

25 A: That's correct.

*Gore Perry Gateway Lipa Baker Dunn & Butz
St. Louis 314.241.6750 St. Charles 636.940.0926*

1 Q: If you don't have a driver's license,
2 how do you get from point A to point B?

3 A: Friends, bus, taxi.

4 Q: How did you get here today?

5 A: A friend of mine.

6 Q: What friend?

7 A: Peggy Zigan.

8 Q: She dropped you off at your attorney's
9 office?

10 A: Yes.

11 Q: Is she going to -- are you going to
12 call her and she's going to take you home
13 today?

14 A: Yes.

15 MR. HENDRICKSON: Objection,
16 irrelevant. You can answer.

17 A: Yes, she's going to take me back over
18 to my house.

19 Q: (By Mr. Relihan) Do you own a car or
20 lease a car?

21 A: I have a truck.

22 Q: If you don't have a driver's license,
23 why do you have a truck?

24 A: Because I'm working on getting my
25 driver's license straightened out.

*Gore Perry Gateway Lipa Baker Dunn & Butz
St. Louis 314.241.6750 St. Charles 636.940.0926*

1 Q: When did you buy that truck?

2 A: The 4th of last month.

3 Q: October 4th?

4 A: Yes.

5 Q: What dealership?

6 A: Cars Unlimited, St. Charles.

7 Q: Is that a dealership?

8 A: Yes.

9 Q: Okay.

10 A: Used car dealership.

11 Q: Did they ask for any form of proof
12 being able to drive?

13 A: No.

14 Q: Did you drive that truck off the lot?

15 MR. HENDRICKSON: Objection,
16 irrelevant. Justin, where are you going with
17 this? It's a completely irrelevant, the issue
18 of, and you know what, I'm stopping it, we are
19 not, you can either talk about citizenship and
20 residency, otherwise the deposition is done.

21 MR. RELIHAN: For the record, in the
22 case law, these are all relevant materials that
23 the --

24 MR. HENDRICKSON: Whether you drove
25 off a lot without a license or not is relevant

*Gore Perry Gateway Lipa Baker Dunn & Butz
St. Louis 314.241.6750 St. Charles 636.940.0926*

1 to residency and citizenship? Tell me where.

2 MR. RELIHAN: I want to see what proof
3 he gave when he pulled that truck off the lot.

4 MR. HENDRICKSON: He told you he
5 didn't give any proof. We're done, move on.
6 Move on or we'll close it up right now. You've
7 had your chance. This deposition is limited to
8 the questions of jurisdiction and diversity
9 jurisdiction, you are way afield of it and I'm
10 shutting it down if you keep asking that
11 question.

12 MR. RELIHAN: All right.

13 Q: (By Mr. Relihan) You had a Texas
14 driver's license prior to the one you're
15 applying for currently?

16 A: Yes.

17 Q: Okay. That was last valid in 1998?

18 A: Yes.

19 Q: Did you ever renew that license?

20 A: No, I didn't.

21 Q: When did you apply for -- have you
22 applied for a Missouri driver's license?

23 A: I'm trying -- no, I haven't actually
24 applied, I'm trying to get some tickets taken
25 care of so I can apply.

*Gore Perry Gateway Lipa Baker Dunn & Butz
St. Louis 314.241.6750 St. Charles 636.940.0926*

1 Q: Have you registered the truck in
2 Missouri?
3 A: Not yet.
4 Q: If you look at the Answer to No. 12 on
5 the Interrogatories, sir, you just testified
6 that you have not applied for a Missouri
7 license, but then that answer No. 12, is that
8 incorrect?

9 MR. HENDRICKSON: This is the answer.
10 (Indicating)

11 A: It's incorrect the way I stated it, I
12 guess.

13 Q: (By Mr. Relihan) Okay. So you're
14 waiting, do you have an outstanding, you're
15 waiting for proof of a payment of a fine in
16 Oregon before you apply for a Missouri license?

17 A: Yes.

18 Q: So --

19 A: They gave me the information as to
20 where I needed to go to to take care of that,
21 and then once I get that letter from Oregon,
22 they'll give me my license.

23 Q: You say "they" gave you the
24 information, who is "they"?

25 A: The Missouri driver's license place.

*Gore Perry Gateway Lipa Baker Dunn & Butz
St. Louis 314.241.6750 St. Charles 636.940.0926*

1 Q: When did you go to the Missouri
2 driver's license place and was told that
3 information?
4 A: This past month sometime.
5 Q: This past month in November?
6 A: No, when did I -- I got the truck
7 October 4th, it was right around that time is
8 when I was trying to get my license going.
9 Q: But it's fair to state you do not
10 remember the exact date you --
11 A: No, I don't.
12 Q: -- went to the driver's license
13 bureau, is that correct?
14 A: That's correct.
15 Q: You own that truck, sir?
16 A: Yes, I do.
17 Q: Has it been registered in Missouri?
18 A: No.
19 Q: Do you know if you need a Missouri
20 license in order to register it?
21 A: Yes, you do.
22 Q: Therefore, you need to take care of
23 the license part before you register?
24 A: Right.
25 Q: Okay. Do you have your application --

*Gore Perry Gateway Lipa Baker Dunn & Butz
St. Louis 314.241.6750 St. Charles 636.940.0926*

1 or strike that. When you bought your truck,
2 was it cash, did you pay all of it up front?

3 A: I paid cash.

4 Q: All of it up front?

5 A: (Witness nods)

6 Q: Yes?

7 A: Yes.

8 Q: Do you have any forms you had to fill
9 out where you bought it?

10 A: Yes.

11 Q: Do you have any of those materials?

12 A: Not with me.

13 Q: Okay. Do you have them at home?

14 A: I believe I do.

15 Q: Could you forward those to your
16 attorney so I could get a copy.

17 A: Yes, yes.

18 Q: Thank you. Do you remember what
19 address you put on that application?

20 A: 14 Ridgeview Court.

21 Q: When was the last vehicle you owned
22 prior to this truck?

23 A: '78 International Scout in '91.

24 Q: You got rid of it in 1991?

25 A: Yes.

*Gore Perry Gateway Lipa Baker Dunn & Butz
St. Louis 314.241.6750 St. Charles 636.940.0926*

1 Q: Okay. Did you pay income taxes for
2 2005?

3 A: No, I didn't.

4 Q: Are you going to be paying any income
5 taxes for 2006?

6 A: No.

7 Q: Okay. When was the last time you paid
8 income taxes?

9 A: '03, I believe.

10 Q: Did you pay Illinois state taxes as
11 well?

12 A: Yes.

13 Q: Fair to state that the last state
14 income taxes you paid was in Illinois in 2003?

15 A: Correct.

16 Q: And you were living at Wilshire at
17 that time?

18 A: No, I was at 3901 Village Lane.

19 Q: Thank you. Your only family is your
20 father and sister in El Paso, Texas?

21 A: Yes.

22 Q: You also have a cousin?

23 A: I have various cousins, but not close.

24 Q: Your only immediate family is in El
25 Paso, Texas?

*Gore Perry Gateway Lipa Baker Dunn & Butz
St. Louis 314.241.6750 St. Charles 636.940.0926*

1 A: Yes.
 2 Q: You don't own any property?
 3 A: No.
 4 Q: Therefore, you have not paid any real
 5 estate taxes?
 6 A: No.
 7 Q: Okay. All your personal property is
 8 located at your present address?
 9 A: Yes, it is.
 10 Q: And you're the only one living at your
 11 present address, correct?
 12 A: Yes.
 13 Q: Okay. Is it fair to state that in
 14 going back to the Elsberry address, you lived
 15 with Leah Fennell, correct?
 16 A: Yes.
 17 Q: Were any of the utilities in your
 18 name?
 19 A: No, they weren't.
 20 Q: Did you pay any utilities?
 21 A: No, I didn't.
 22 Q: Is paying utilities part of the lease
 23 agreement?
 24 A: No, they weren't.
 25 Q: The lease was, the oral lease was only

*Gore Perry Gateway Lipa Baker Dunn & Butz
 St. Louis 314.241.6750 St. Charles 636.940.0926*

60

1 A: Yes.
 2 Q: So no time in October 2006 did you
 3 ever call an Ameren UE to set up your
 4 utilities?
 5 A: No.
 6 Q: Did you fill out any forms for your
 7 utility, to set up utilities?
 8 A: I called them on the phone and they
 9 came out and hooked them up.
 10 Q: Did they give you like a pink slip
 11 showing that they did service and turned it on?
 12 A: I don't know, I don't remember that.
 13 Q: Fair to state that if they did leave
 14 you anything, you don't have it anymore?
 15 A: I've been unpacking and everything,
 16 throwing stuff away, I have no idea where it
 17 might be.
 18 Q: Okay. I think that's about it. Do
 19 you have -- you said in Answer to 22, in your
 20 Interrogatories, that you paid utilities in
 21 Illinois in April, do you have any copies of
 22 those utility bills?
 23 A: No, I don't.
 24 Q: Okay. Just so I remember it, the
 25 lease that you had entered into for the

*Gore Perry Gateway Lipa Baker Dunn & Butz
 St. Louis 314.241.6750 St. Charles 636.940.0926*

61

1 for rent, correct?
 2 A: Correct, utilities included.
 3 Q: Have you set up utilities in your
 4 current address?
 5 A: Yes, I have.
 6 Q: What utilities have you set up in your
 7 current address?
 8 A: Gas and electric.
 9 Q: Anything else?
 10 A: No.
 11 Q: Who's your gas company do you know?
 12 A: I, Ameren IP, or something like that,
 13 they're both Ameren.
 14 Q: Ameren UE, does that sound about
 15 right?
 16 A: That's probably right.
 17 Q: They're both gas and electric?
 18 A: Yes.
 19 Q: Okay. Have you received any bills
 20 from them?
 21 A: Not yet.
 22 Q: When did you contact them to set up
 23 your service?
 24 A: I believe it was the week before last.
 25 Q: So in November you set it up?

*Gore Perry Gateway Lipa Baker Dunn & Butz
 St. Louis 314.241.6750 St. Charles 636.940.0926*

1 Elsberry, that was for a year, correct?
 2 A: Correct,
 3 MR. RELIHAN: That's all I have.
 4 EXAMINATION
 5 QUESTIONS BY MR. HENDRICKSON:
 6 Q: I've got some clarification. Don, on
 7 September 13th, 2006, on the date that the suit
 8 was initially filed in state court in Illinois,
 9 were you living with your cousin Billy Fennell
 10 St. Charles County, Missouri?
 11 A: Yes, I was.
 12 Q: Okay. At that time on September 13th,
 13 2006, had you informed me that you had moved to
 14 St. Charles County, Missouri?
 15 A: I don't believe I did.
 16 Q: Okay. At that time, without
 17 discussing anything that we've ever discussed,
 18 how was it that you and I would communicate,
 19 what was my form of contact with you?
 20 A: My cell phone.
 21 Q: Has that always been my form of
 22 contact with you?
 23 A: Yes, it has.
 24 Q: And that hasn't changed throughout
 25 that period of time?

*Gore Perry Gateway Lipa Baker Dunn & Butz
 St. Louis 314.241.6750 St. Charles 636.940.0926*

1 A: No, it hasn't.

2 Q: Okay. Including the time when you

3 were in Texas, same cell phone, is that

4 correct?

5 A: Yes.

6 Q: From the time you moved in Illinois

7 following your fiance's death in April of this

8 year, did you establish a permanent residency

9 in any state other than Missouri?

10 A: No.

11 Q: Did you establish citizenship in any

12 state other than Missouri?

13 MR. RELIHAN: I'm going to object to

14 the form of the question as it calls for a

15 legal conclusion, outside the purview of this

16 witness' ability to answer.

17 Q: (By Mr. Hendrickson) You can go ahead

18 and answer.

19 A: Would you repeat it?

20 Q: Did you establish citizenship in any

21 state other than Missouri?

22 MR. RELIHAN: Same objection.

23 A: No.

24 Q: (By Mr. Hendrickson) On October 13th,

25 2006, the date that Dr. Petrovich's attorneys

Gore Perry Gateway Lipa Baker Dunn & Butz
St. Louis 314.241.6750 St. Charles 636.940.0926

1 Q: Now, given that that was a Friday on

2 that date, the date that you signed this, had

3 you been removed from 817 Randolph in Elsberry,

4 Missouri?

5 A: I don't believe I had.

6 Q: Okay. Who broke the lease for 817

7 Randolph, Elsberry, Missouri, you or Ms.

8 Pennell?

9 A: She did.

10 Q: Okay. Did she ask you to leave?

11 A: She ordered me to leave.

12 Q: She ordered you to leave, all right.

13 And do you remember what day of the week that

14 occurred on?

15 A: A Wednesday morning.

16 Q: Okay. And if the following Wednesday

17 would be October 25th, 2006, would that be the

18 most likely date that she asked you to leave?

19 A: Yes, I believe that would be pretty

20 close.

21 Q: Did only a couple of days pass between

22 the time she asked you to leave and the time

23 you found your current residence at 3152

24 Boonslick Road?

25 A: Yes.

Gore Perry Gateway Lipa Baker Dunn & Butz
St. Louis 314.241.6750 St. Charles 636.940.0926

1 filed a notice of removal from State to Federal

2 Court, were you a resident of Missouri at that

3 time?

4 A: Yes.

5 Q: All right. At that time, were you

6 residing at 817 Randolph in Elsberry, Missouri?

7 A: Yes, I was.

8 Q: It was your intent on October 13th,

9 2006 that that would be your permanent

10 residency for the foreseeable future at 817

11 Randolph in Elsberry, Missouri?

12 A: Yes.

13 Q: Okay. There was some confusion as to

14 dates, I think, in the questioning. You signed

15 an affidavit on October 20th, 2006 that we

16 attached to our Motion to Remand, is that

17 correct?

18 A: Yes.

19 Q: And you signed it on October 20th,

20 2006?

21 A: Yes.

22 Q: If we look at a calendar, October

23 20th, 2006 was a Friday, that was the date that

24 you -- so you signed this on a Friday, correct?

25 A: Right.

Gore Perry Gateway Lipa Baker Dunn & Butz
St. Louis 314.241.6750 St. Charles 636.940.0926

1 Q: All right. And since you moved in

2 there or made that arrangement on October 27th,

3 2006, would the date that you removed, you were

4 removed from 817 Randolph be the most recent

5 Wednesday before that date?

6 A: Yes.

7 Q: And if October 27th, 2006 is on a

8 Friday, that would make that date that you were

9 asked to leave 817 Randolph October 25th, 2006,

10 is that right?

11 A: Yes.

12 Q: At the time that you made the

13 arrangements with Leah Fennell at 817 Randolph,

14 you paid rent and a security deposit, is that

15 correct?

16 A: Correct.

17 Q: And she has since refunded at least

18 part of the security deposit due to her

19 breaking the lease, right?

20 A: Correct.

21 Q: So, on October 13th, 2006, was it, is

22 it clear to you that on that date, you were a

23 resident of Missouri?

24 MR. RELIHAN: Objection to form.

25 A: Yes.

Gore Perry Gateway Lipa Baker Dunn & Butz
St. Louis 314.241.6750 St. Charles 636.940.0926

1 Q: (By Mr. Hendrickson) Were you a
2 resident of Missouri on October 13th, 2006?
3 A: Yes, I was.
4 MR. RELIHAN: Object to form,
5 foundation.
6 Q: (By Mr. Hendrickson) Were you a
7 resident of Illinois on September 13th, 2006?
8 A: No, I wasn't.
9 Q: Were you a resident of Illinois on
10 October 13th, 2006?
11 A: No, I wasn't.
12 Q: Okay. Was the last time you had a --
13 when was the last time you had a permanent
14 residence in Illinois?
15 MR. RELIHAN: Objection, asked and
16 answered.
17 A: Prior to May of '06, that was my last
18 real residence.
19 Q: (By Mr. Hendrickson) Okay. Were you
20 ever aware what state Dr. Petrovich was a
21 resident of prior to the filing of Defendant's
22 Motion?
23 MR. RELIHAN: Object to relevance.
24 Q: (By Mr. Hendrickson) You can answer.
25 A: No, I didn't.

*Gore Perry Gateway Lipa Baker Dunn & Butz
St. Louis 314.241.6750 St. Charles 636.940.0926*

1 filed today, we filed today, that included the
2 production of a copy of your check showing your
3 bank account at Bank of America in St. Charles,
4 Missouri, correct?
5 A: Correct.
6 Q: And to open this bank account, you
7 went to the bank branch located in St. Charles?
8 A: Yes, sir.
9 Q: Do you remember what street that is
10 on?
11 A: No, I don't.
12 Q: Okay. You gave them a phone number of
13 636-947-8974, whose phone number is that?
14 A: That was Bill Fennell's home phone.
15 Q: Okay. And did you do that with his
16 permission?
17 A: Yes.
18 Q: And you gave the address where you
19 were living at that time, 14 Ridgeview Court,
20 correct?
21 A: Correct.
22 Q: Okay. And that was established
23 sometime in September of 2006?
24 A: Yes.
25 Q: Okay. Do you have any bank accounts

*Gore Perry Gateway Lipa Baker Dunn & Butz
St. Louis 314.241.6750 St. Charles 636.940.0926*

1 Q: Okay. On October 3rd, 2006 when you
2 moved into 817 Randolph, Elsberry, Missouri,
3 were you doing that in order to defeat
4 jurisdiction -- diversity jurisdiction in the
5 present litigation?
6 MR. RELIHAN: Object to the --
7 A: No.
8 MR. RELIHAN: Object to the form,
9 foundation, improper questioning, calls for a
10 legal conclusion that this witness clearly
11 didn't know what diversity jurisdiction is or
12 was prior to the filing of this case, but his
13 answer is --
14 MR. HENDRICKSON: I'll accept that as
15 true.
16 Q: (By Mr. Hendrickson) Go ahead. Were
17 you, were you trying to defeat the --
18 A: No, I wasn't.
19 MR. RELIHAN: Same objection.
20 MR. HENDRICKSON: Same objection, I
21 understand.
22 MR. RELIHAN: Yes, yes.
23 Q: (By Mr. Hendrickson) I'm going to
24 reference you to Deposition Exhibit No. 5,
25 which is our supplemental responses that you

*Gore Perry Gateway Lipa Baker Dunn & Butz
St. Louis 314.241.6750 St. Charles 636.940.0926*

1 in your name established with addresses for any
2 other address other than the one in Missouri?
3 A: No.
4 Q: And after your fiance's death, when
5 you went to Texas to visit your father, did you
6 have any intent to permanently remain there?
7 A: Yes, I did.
8 Q: It was your intent at that time?
9 A: Yes.
10 Q: Okay. When you moved from there in
11 June of 2006, did you have any intent to return
12 back to Texas?
13 A: No.
14 Q: Been there, done that?
15 A: Yep.
16 Q: Okay. And is it fair to say that from
17 the period of time when you left your father's
18 residence in Texas until you entered into the
19 rental agreement with Leah Fennell, you didn't
20 have, you didn't rent any property during that
21 period of time?
22 A: No, I didn't.
23 Q: Didn't pay any utilities?
24 A: No.
25 Q: Didn't have any permanent residency of

*Gore Perry Gateway Lipa Baker Dunn & Butz
St. Louis 314.241.6750 St. Charles 636.940.0926*

any kind?

A: No, I didn't.

MR. HENDRICKSON: I don't have any other questions.

EXAMINATION

QUESTIONS BY MR. RELIHAN:

Q: Just a quick follow up, Mr. Canterbury. When you went to the driver's license bureau seeking to get a Missouri driver's license and they said you needed to take care of the tickets in Oregon, that issue, did you apply for a Missouri ID card?

A: No, I didn't.

Q: Prior to the lease being broken at Elsberry, from your testimony earlier, is it fair to say that prior to that date, you were aware that it wasn't going to work out with Ms. Fennell?

A: Repeat the question, please.

Q: Okay. Earlier in this deposition, we talked about that prior to you leaving Elsberry you knew it wasn't going to work out, it wasn't right away, you thought it could work out and then it got to the point where you knew it wasn't going to work out, do you remember

Gore Perry Gateway Lipa Baker Dunn & Butz
St. Louis 314.241.6750 St. Charles 636.940.0926

testifying to that?

A: Yes.

Q: Your counsel asked you questions where you answered that Ms. Fennell broke the lease, correct?

A: Yes.

Q: And through computation, that date we assume based on your testimony is at or around October 25th, 2006?

A: Yes.

Q: A Wednesday, correct?

A: Yes.

Q: What I want to know is; when did you know, before the lease was broken, how many days before that were you aware that it wasn't going to work out?

A: That morning.

Q: No time sooner?

A: No.

Q: Okay.

MR. RELIHAN: That's it.

MR. HENDRICKSON: No other questions. We'll read.

Gore Perry Gateway Lipa Baker Dunn & Butz
St. Louis 314.241.6750 St. Charles 636.940.0926

STATE OF MISSOURI

SS.

CITY OF ST. LOUIS

I, Margaret M. Clodius, a Notary Public in and for the State of Missouri, duly commissioned, qualified and authorized to administer oaths and to certify to depositions, do hereby certify that pursuant to Notice in the civil cause now pending and undetermined in the United States District Court, Southern District of Illinois, to be used in the trial of said cause in said court, I was attended at Husch & Eppenberger, 190 Carondelet Plaza, St. Louis, Missouri, by the aforesaid witness; and by the aforesaid attorneys; on NOVEMBER 14, 2006.

That the said witness, being of sound mind and being by me first carefully examined and duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the case aforesaid, thereupon testified as is shown in the foregoing transcript, said testimony being by me reported

Gore Perry Gateway Lipa Baker Dunn & Butz
St. Louis 314.241.6750 St. Charles 636.940.0926

in stenotype and caused to be transcribed into typewriting, and that the foregoing pages correctly set forth the testimony of the aforementioned witness, together with the questions propounded by counsel and remarks and objections of counsel thereto, and is in all respects a full, true, correct and complete transcript of the questions propounded to and the answers given by said witness; that the signature of the deponent was not waived by agreement of counsel.

I further certify that I am not of counsel or attorney for either of the parties to said suit, not related to nor interested in any of the parties or their attorneys.

Witness my hand and notarial seal at St. Louis, Missouri, this 14th day of November, 2006.

My Commission expires September 26, 2010.

Margaret M. Clodius

Notary Public in and for the
State of Missouri

Gore Perry Gateway Lipa Baker Dunn & Butz
St. Louis 314.241.6750 St. Charles 636.940.0926

Gore Perry Gateway & Lipa Reporting

Attn: Mr. Todd Hendrickson
Law Office of Todd Hendrickson
100 South Brentwood
Clayton, Missouri 63105

Enclosed please find the Original Signature pages
and errata sheets for the deposition of:
Donald Canterbury taken 11/14/2006 in the case of:
Donald Canterbury vs. John Petrovich, M.D.
Please read your copy of the transcript, noting
any corrections on the enclosed erratta sheets,
and return all pages for filing in court to:
Attn: Mr. Justin Relihan
Husch Eppenberger
190 Carondelet Plaza
St. Louis, Missouri 63105

Your prompt cooperation will be appreciated.

Sincerely,

Gore Perry Gateway & Lipa Reporting

Gore Perry Gateway Lipa Baker Dunn & Butz
St. Louis 314.241.6750 St. Charles 636.940.0926

COURT MEMO

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

Donald Canterbury vs. John Petrovich, M.D.
3:06-cv-792-MJR-PMF

CERTIFICATE OF OFFICER AND
STATEMENT OF DEPOSITION CHARGES

DEPOSITION OF DONALD CANTERBERY
TAKEN ON BEHALF OF THE DEFENDANT
11/14/2006

Name and address of person or firm having custody of
the original transcript:
Justin Relihan
Husch & Eppenberger
190 Carondelet Plaza, Suite 600
St. Louis, MO 63105

Gore Perry Gateway Lipa Baker Dunn & Butz
St. Louis 314.241.6750 St. Charles 636.940.0926

ORIGINAL TRANSCRIPT TAXED IN FAVOR OF:

Justin Relihan
Husch & Eppenberger
190 Carondelet Plaza, Suite 600
St. Louis, MO 63105

Total:
1 ONE COPY - TAXED IN FAVOR OF:
Todd Hendrickson
Hendrickson, Law Offices of Todd N.
7700 Bonhomme, Suite 210
Clayton, MO 63105

Total:

Upon delivery of transcripts, the above
charges had not been paid. It is anticipated
that all charges will be paid in the normal course
of business.

GORE PERRY GATEWAY & LIPA REPORTING COMPANY
515 Olive Street, Suite 700
St. Louis, Missouri 63101

IN WITNESS WHEREOF, I have hereunto set
my hand and seal on this _____ day of _____
Commission expires _____
Notary Public

Gore Perry Gateway Lipa Baker Dunn & Butz
St. Louis 314.241.6750 St. Charles 636.940.0926

1 Page 14 Line 20 Should Read: Lee, not Leah

2 Reason for change: Misspelled throughout.

3

4 Page 20 Line 2 Should Read: That's not true.

5 Reason for change: Depoent was confused as to dates,
6 Per subsequent testimony.

7 Page 22 Line 22 Should Read: It had to have been around
8 the 25th.

Reason for change:

9 Mistake as to date, per subsequent testimony P. 64/L. 19

10 Page 24 Line 5 Should Read: A: other than 917 Randolph.

11 Reason for change:

12 ~~to~~ Subsequent correction, P 24/L. 11

13 Page Line Should Read:

14 Reason for change:

15

16 Page Line Should Read:

17 Reason for change:

18

19 Page Line Should Read:

20 Reason for change:

21

22 Page Line Should Read:

23 Reason for change:

24

25

1 Comes now the witness, Donald Canterbury,
2 and having read the the foregoing transcript
3 of the deposition taken on the 11/14/2006,
4 acknowledges by signature hereto that it is a
5 true and accurate transcript of the testimony given
6 on the date hereinabove mentioned.


7
8 
9

10 Donald Canterbury
11

12 Subscribed and sworn to me before this

13 15th day of December, 2006.

14 My Commission expires

15 
16 Todd N. Hendrickson - Notary Public
17 Notary Seal, State of
Missouri - St. Louis County
Commission #05551975
My Commission Expires 4/5/2009

18 Notary Public
19
20
21
22
23
24
25